



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-19

CITY OF BURNABY

Carol Pakkala
Adjudicator

March 12, 2025

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Summary: The City of Burnaby (City) applied for relief under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard certain outstanding and future access requests made by the respondent. The adjudicator found that the requests were not vexatious under s. 43(a) and were not repetitious or systematic under s. 43(c)(ii). The adjudicator declined to provide the City with authorization to disregard the requests.

Statutes Considered: *Freedom of Information and Protection of Privacy Act, RSBC 1996 c. 165, ss. 10(1), 10(2), 43(a) and 43(c)(ii).*

INTRODUCTION

[1] This inquiry is about the City of Burnaby's (City) application under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) for authorization to disregard certain outstanding access requests submitted by a now former City employee (respondent).

[2] The City argues that the requests are repetitious, systematic, or vexatious and that responding to them would unreasonably interfere with its operations. The City also requested authorization to disregard further requests from the respondent which are part of the same systematic and repetitive effort to seek information relating to or in service of the respondent's employment disputes with the City.¹

[3] The respondent opposes the City's s. 43 application, saying the City's request is premature and fails to meet the standard of proof required under

¹ City's initial submission at the top of p. 3 (before starting numbered paragraphs). The City made the application on November 29, 2024.

FIPPA. The respondent further says the requests were made for legitimate reasons and were not repetitive, systematic or vexatious.²

Preliminary Matters

Volume of submissions and evidence

[4] Both parties provided extensive submissions and supporting documents in this inquiry.³ In my view, much of the material presented by both parties is not relevant to the issues before me. I appreciate there are significant, unresolved underlying issues between the parties, but the purpose of this inquiry is to decide the FIPPA issues, not those underlying disputes. While I have read all of the submissions and reviewed the supporting documentation, I will refer only to matters relevant to the FIPPA issues in this inquiry.

Prima facie dismissal

[5] The respondent argues the City's application should be dismissed on its face.⁴ I understand the respondent's position to be that the City's affidavit evidence⁵ in support of its application has no probative value and is unreliable.⁶ The respondent says the affidavit of the City's Director, Legislative Services, Corporate Officer [Director] lacks probative value because it is based, in part, on information and belief.⁷ The respondent further says the Director's affidavit is not reliable because it is inconsistent with an affidavit presented by the City in other proceedings.⁸

[6] The City says evidence based on information and belief is permissible.⁹ The City further says that the Director's affidavit is relevant, permissible, probative, and supported by documentary evidence.¹⁰

[7] In general, the strict rules of evidence that apply to court proceedings do not apply to administrative proceedings, including this application.¹¹ For example, hearsay is admissible if it is "logically probative and may fairly be regarded as

² Respondent's submission at p. 9 (before starting numbered paragraphs).

³ The City provided a 34 page initial submission along with a 14 page affidavit supported by 170 pages of exhibits and a 13 page reply submission. The respondent provided a 137-page submission and 147 pages of supporting documentation.

⁴ Respondent's submission at para 103.

⁵ Affidavit of the City's Director of Legal Services, Corporate Officer [Director].

⁶ Respondent's submission at para 105.

⁷ Respondent's submission at paras 106-107.

⁸ Respondent's submission at para 108.

⁹ City's reply submission at para 14.

¹⁰ City's reply submission at para 15.

¹¹ Order F21-02, 2021 BCIPC 2 (CanLii) at para 4 citing *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras 67-68; and Order F08-22, 2008 CanLII 70316 (CanLII) at para 28.

reliable”.¹² Given the flexible approach to evidence in administrative proceedings, I am satisfied that it is not necessary in this case to make preliminary rulings on the admissibility of evidence. I will consider the affidavit submitted, assess its credibility and reliability, and determine what weight it should be given.

Termination of the respondent’s access rights

[8] The parties’ submissions address an issue regarding access rights and the City blocking the respondent’s email address for a period of time.¹³ While I recognize that the parties dispute different aspects of this blocking, I will not consider it further as the issue before me is only about the outstanding access requests.

Access requests subject to this s. 43 application

[9] The City seeks authorization to disregard four outstanding access requests dated May 20, 2022, December 3, 2023, July 20, 2024 and November 25, 2024. For the reasons that follow, I will only consider granting relief under s. 43 for the December 3, 2023 and November 25, 2024 access requests.

[10] I am considering the December 3, 2023 request even though it is clearly outside the legislated time for response. The reason I am considering this request is because the OIPC already determined in a separate file¹⁴ that this request was not received by the City until August 27, 2024 at which point the City assessed a fee. Given that the fee remains unpaid, the clock remains stopped so the City is not deemed to have refused this request as of the date of its s. 43 application.

[11] I outline below the reasons for not considering relief for the other two requests.

July 20, 2024 request

[12] The City is asking to disregard an access request it received from the respondent on July 20, 2024 which is the subject of a deemed refusal complaint to the OIPC.¹⁵ The City acknowledges that it did not respond to this access

¹² Order F21-02, 2021 BCIPC 2 (CanLII) at para 4 citing *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at para 36; Order F20-48, 2020 BCIPC 57 (CanLII) at para 34.

¹³ The City acknowledges that the restriction it placed on the respondent’s email resulted in the City not receiving their correspondence related to FIPPA matters for a number of months. If the City blocked the respondent’s emails containing FIPPA access requests, this would be disregarding without s. 43 authorization.

¹⁴ OIPC File no. F24-97947.

¹⁵ OIPC File no. F24-98771.

request by the deadline set out in FIPPA and that, therefore, this request was overdue when it filed its s. 43 application.¹⁶

[13] Since the City did not respond to the July 20, 2024 request within the legislated deadline, I must decide whether it is appropriate to consider granting s. 43 relief for that request. Whether it is appropriate to grant s. 43 relief will depend on the specific circumstances of each case.¹⁷

[14] Generally, the OIPC does not consider s. 43 applications where the public body has already contravened s. 7 by failing to meet the time limit to respond. In previous OIPC orders, adjudicators have decided to consider overdue requests when the respondent was responsible for contributing to the public body's inability to respond in time to the access request, for instance by overwhelming the public body with other access requests and with follow-up issues and questions, and when there was no evidence that the public body had deliberately neglected the overdue request.¹⁸

[15] In this case, the City acknowledged the July 20, 2024 request was overdue but says the respondent's approach to engaging the access to information regime has been a significant contributor in response time delays by the City.¹⁹ The City's evidence is that the respondent made a total of six access requests over a two-and-a-half-year period. In my view, this cannot be characterized as an overwhelming volume of access requests. I decline to consider the overdue July 20, 2024 access request and the City must promptly respond to that request.

May 20, 2022 request

[16] In its initial submissions in this inquiry, the City sought to add a May 20, 2022 request to its s. 43 application. The City did not seek the OIPC's prior approval to add the May 20, 2022 request to this application.

[17] The City says it asked the respondent for clarification about this request by way of letters dated June 1 and June 15, 2022. The City says when it did not hear back from the respondent, it assumed the request was abandoned. The respondent says they²⁰ never received the June 1 and June 15, 2022 letters.²¹ The respondent further says that the City's practice was to respond by email to

¹⁶ City's reply submission at para 20.

¹⁷ F23-90, 2023 BCIPC 106 at para 19 citing Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 25.

¹⁸ F23-90, 2023 BCIPC 106 at para 19 citing Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 26; Order F20-15, 2020 BCIPC 17 at para 10; Decision F06-03, 2006 CanLII 13535 (BCIPC) at para 30.

¹⁹ City's reply submission at para 21.

²⁰ I intentionally use gender neutral pronouns to protect the identity of the respondent.

²¹ Respondent's submission at para 244.

access requests and attach any letters to the email, and there is no corresponding email proof the letters were sent.²²

[18] The City, in its reply, says the respondent has provided nothing other than a bare assertion, three years later, that they did not receive the City's clarification-seeking correspondence from June 1 and 15, 2022.²³ The City further says the respondent was on a leave of absence during the period of that correspondence and that the City's standard practice where employees are on leave and may not have access to their City email account is to send correspondence by mail.²⁴ The City says it followed standard procedure for seeking clarification regarding a very broad access request and when it received no response, it reasonably assumed the request was inactive.²⁵

[19] I can see from the exhibits attached to the Director's affidavit that aside from the June 1 and 15, 2022 letters to the respondent, all formal letters from the City to the respondent were sent either via regular mail and email to the respondent's personal email address²⁶ or via courier.²⁷ Further, I can see extensive formal correspondence between the parties via email alone.

[20] In my view, based on the City's practice, it was reasonable for the respondent to expect correspondence by email. Further, as the first access request, I cannot see why the respondent would abandon this request. For these reasons, I am not satisfied the City effectively communicated a request for clarification of the May 20, 2022 request or that the respondent abandoned the request.

[21] Public bodies have an obligation to respond to access applicants within legislated response times and, if they are likely unable to do so, then they must take or seek the time extensions as permitted under FIPPA.²⁸ I do not see evidence that the City sought an authorized extension of time to respond to this request.

[22] Based on the foregoing, I find the City did not properly respond to the May 20, 2022 request and that this request is long overdue. Having concluded that this access request is overdue, I must decide whether it is appropriate to consider granting the City s. 43 relief related to this request.

[23] As noted above, the May 20, 2022 request was the respondent's first access request in what the City now says is the respondent's repetitive and

²² Respondent's submission at paras 261-262.

²³ City's reply submission at para 35.

²⁴ *Ibid.*

²⁵ City's reply submission at para 37.

²⁶ See for example, Exhibits 5, 9, 10, 13, and 15 to the Director's affidavit.

²⁷ Exhibit 2 to Director's affidavit.

²⁸ Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 25.

systematic (or vexatious) approach to access requests. I can see from the Director's affidavit that, at the time of that request, the relationship between the City and Respondent had become litigious.²⁹ This evidence reveals a number of union grievances and human rights complaints. While I appreciate the City was immersed in responding to those matters, this evidence does not support an inability to respond to an access request within the legislated timelines.

[24] I further find there is insufficient evidence of the respondent being responsible for contributing to the City's inability to respond in time to that first access request. I decline to add the May 20, 2022 access request to this s. 43 application. The City must promptly respond to that request.

[25] From this point forward, when I use the term "outstanding" requests, I am referring to the December 3, 2023 and November 25, 2024 access requests.

ISSUES AND BURDEN OF PROOF

[26] The issues in this application are:

1. Would responding to the respondent's outstanding access requests unreasonably interfere with the City's operations because the requests are repetitious or systematic (s. 43(a))?
2. Are the outstanding requests frivolous or vexatious (s. 43(b))?
3. If the answer to either of these questions is "yes", what relief, if any, is appropriate?

[27] The burden of proof is on the City to show that s. 43(a) or s. 43(b) applies.³⁰

DISCUSSION

Background

[28] The respondent was a City employee from at least 2016³¹ until terminated in February 2023. The respondent was on disability leave at the time of termination. There were a number of disputes between the parties related to the disability leave, the respondent's termination, and a workplace investigation.³²

²⁹ Director's affidavit at paras 10-16.

³⁰ Order F19-44, 2019 BCIPC 50 (CanLII) at para 4.

³¹ There is a discrepancy between what the City and respondent say about the respondent's start date.

³² Director's affidavit at para 9.

[29] Between May of 2022 and November 2024, the respondent made six access requests. In this application, the City seeks to disregard the respondent's requests dated December 3, 2023 and November 25, 2024.

Details of the Requests

[30] On December 3, 2023, the respondent requested:

1. All (Financial or other) records related to “Union Paid Leave” or “Union Leave” or other similar SAP coding (or any other relevant software) and supporting documents, for the time coding -number of hours (if ZERO please clearly state this)- and/or remuneration for the following:

A, From 10:00AM through 1:00pm ON: March 7, 15, AND April 3, 4, AND May 1, 2, AND June 13, 20, 2023;

B. For: CUPE Local 23 elected representatives: Inside Chair, [...] * Inside First Vice Chair, [...] *, Inside Second Vice Chair [...] *

C. Please include the corresponding & supporting documents for each day and each person. (i.e. January 1, 2020, 2 hours, John Doe.)

2. Additionally: If the corresponding & or supporting documentation references or implies that it is related to me, including if it refers to Grievance [...] * or Grievance [...] *, please include that information as that falls under the category of being my personal information.³³

[31] On November 25, 2024, the respondent requested:

...all records relating to me for the City's investigation, et al. during the period from July 2022-February 2023

1. The retainer agreement and scope of contract (factual information) between the City and [...] *,

2. The agreed upon questions to be asked of all interviewees and witnesses which are factual information and material, and required to be disclosed under FIPPA.³⁴

*[details omitted to protect personal privacy]

[32] The City seeks authorization to disregard these requests on the basis they are “repetitive, systematic and/or vexatious, and continued response would

³³ Director's affidavit, Exhibit 30.

³⁴ Director's affidavit, Exhibit 33.

represent an unreasonable allocation of public resources and interference with the City's operations".³⁵

Authorization to disregard requests, s. 43

[33] The applicable portions of s. 43 provide:

43 If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because

(a) the request is frivolous or vexatious,

[...] or

(c) responding to the request would unreasonably interfere with the operations of the public body because the request

(i) is excessively broad, or

(ii) is repetitious or systematic.

[34] The OIPC has broad discretion to consider an application for authorization to disregard an access request. However, the OIPC has repeatedly made clear that this authorization is an "extraordinary remedy"³⁶ that should only be granted after careful consideration and only in exceptional cases.³⁷

[35] Section 43 authorization recognizes that when an individual overburdens a public body with access requests, it interferes with the ability of others to legitimately exercise their access rights under FIPPA.³⁸ Owing to the extraordinary nature of the relief, the OIPC judiciously exercises its discretion to authorize an entity to disregard requests.

[36] I agree with, and will apply, the above principles below.

Section 43(c) – unreasonable interference

[37] Under s. 43(c), the Commissioner may authorize a public body to disregard a request that would unreasonably interfere with the operations of the public body because it is excessively broad (s. 43(c)(i)) or because of the repetitious or systematic nature of the request (s. 43(c)(ii)). The City did not raise

³⁵ City's request for authorization to disregard dated November 29, 2024 at p. 6.

³⁶ Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.

³⁷ Order F22-08, 2022 BCIPC 8 (CanLII) para 29; and Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.

³⁸ Auth (s. 43) 99-01. Available at <https://www.oipc.bc.ca/decisions/170> at page 7.

s. 43(c)(i) in its application for relief but it is referenced briefly in the submissions of both parties, so I address it below.

[38] Sections 43(c)(i) and 43(c)(ii) each have two parts, and the City must establish that both apply. The first part looks at whether the requests are excessively broad, repetitious, or systematic. The second part looks at whether responding to the requests would unreasonably interfere with the City's operations. I first will determine whether the requests at issue are excessively broad, repetitious or systematic. If I find they are, I will turn to whether responding to the requests would unreasonably interfere with the City's operations.

Are the requests excessively broad?

[39] In its application and initial submissions, the City does not cite the broadness of the requests or claim s. 43(c)(i) as a reason for applying for relief. Instead, it appears to rely on s. 43(c)(ii). The City, in its reply submission, responds to what it perceived as the respondent's arguments about the breadth of the requests. For this reason, I will briefly address s. 43(c)(i).

[40] The City says the respondent appears to assert that the requests should not be interpreted as overbroad. The City disputes this assertion and says the respondent's requests are intended to be as broad as possible, and capture as many records as possible. The City says the respondent's approach has resulted in requests that are excessively broad, as well as repetitious, in the form of some overlap between requests.³⁹

[41] The specific details of the access requests at issue in this s. 43 application are outlined above. I cannot see, and the City does not say, how these specific requests are excessively broad. For this reason, I find s. 43(c)(i) does not apply.

Are the requests repetitious?

[42] Repetitious requests are requests made more than once.⁴⁰ The fact that an applicant makes numerous requests does not mean that the requests are repetitious, as long as they are not requesting essentially the same information.⁴¹

[43] The details of the two outstanding requests at issue in this inquiry are outlined above and it is clear on their face that they do not repeat one another. I reviewed the other formal access requests, made by the respondent to the City⁴² and I am satisfied that the respondent has not made repeated requests for the

³⁹ City's reply submission at para 50.

⁴⁰ Decision F12-01, 2012 CanLII 22871 (BC IPC) at para 5.

⁴¹ Order F23-37, 2023 BCIPC 44 (CanLII) at para 45.

⁴² As outlined in the City's initial submissions at para 47.

same information. The requests are clearly different from each other in terms of both content and timeframe. Further, the respondent specifies on one request that “I am not requesting any record that I have previously been provided, or any records that were originally addressed to me or that I was copied on.”⁴³ This statement signals to me the respondent had no intention of making repetitious requests.

[44] The City’s argument, at least in part, is that the outstanding requests are repetitious because they overlap as they relate to topics covered by the earlier requests.⁴⁴ The City says the requests are all in service of the respondent’s employment disputes with the City.

[45] I can see that in general, there is a discernable “employment disputes” theme to the respondent’s access requests. These requests are for records arising from a number of employment related matters including a workplace investigation, human rights complaints, and union grievances.

[46] The question under s. 43(c)(i) is not whether there is an overlap regarding the subject matter of the requests. Instead, the question is whether the applicant is seeking access to the same records. While I appreciate the that the City had a lot to deal with in terms of that overall “employment disputes” theme, the issue is not whether there was overlap in those disputes, but whether there was overlap in the information access requests. The City’s evidence does not convince me that there was such an overlap in the records the respondent sought to access in the outstanding requests.

[47] Based on the above, I find that the respondent’s outstanding requests are not repetitious.

Are the requests systematic?

[48] Systematic requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles. Previous orders have identified characteristics of systematic requests as:

- a pattern of requesting more records, based on what the respondent sees in records already received;
- combing over records deliberately in order to identify further issues;
- revisiting earlier freedom of information requests;
- systematically raising issues with the public body about their responses to freedom of information requests, and then often taking those issues to review by OIPC;

⁴³ Respondent’s September 19, 2023 access request.

⁴⁴ For a similar analysis, see Order F21-02, 2021 BCIPC 2 (CanLII) at para 26.

- behavior suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events; and
- an increase in frequency of requests over time.⁴⁵

[49] The City submits that the respondent's outstanding requests are systematic. It argues its case as follows:

- The respondent combs over records to identify further issues, and requests more records on the basis of alleged issues identified.⁴⁶
- The respondent's use of FIPPA is motivated, at least in part, by an intent to "expose" some presumed illicit conduct⁴⁷ and to conduct surveillance of the City.⁴⁸
- The respondent's motivation for the access requests is to prepare and support active disputes with the City.⁴⁹
- The access requests are systematic in design to probe the City's records for any information relating to the respondent's employment disputes.⁵⁰
- The respondent has raised concerns or objections to every response by the City to an access request. Those responses have escalated into detailed submissions and often include unfounded allegations of misconduct against the City and specific staff.⁵¹

[50] The respondent denies that the outstanding requests are systematic and explains why they were made. One of those reasons is to refresh the respondent's recollection and develop the best possible evidentiary foundation for the ongoing human right proceedings.⁵² The respondent says other litigation is not a bar to access information under FIPPA.⁵³ The respondent also explains that they have submitted a lot of information to the City and provided keywords related to the access requests because they were asked by the City to provide clarification.⁵⁴

[51] The respondent also says that as a person with the complex disabilities, they are not capable of staging or waging or sustaining any kind of "method or plan" that is "carried out according to a set of rules or principles."⁵⁵ The City

⁴⁵ Order F23-37, 2023 BCIPC 44 (CanLII) at para 48 citing Order F13-18, 2013 BCIPC 25 (CanLII) at para 23 and Order F18-37, 2018 BCIPC 40 (CanLII) at para 26.

⁴⁶ City's initial submission at para 54.

⁴⁷ City's initial submission at para 45.

⁴⁸ City's initial submission at para 58.

⁴⁹ City's initial submission at para 46.

⁵⁰ City's initial submission at para 51.

⁵¹ City's initial submission at para 61.

⁵² Respondent's submission at para 1207.

⁵³ Respondent's submission at para 1215.

⁵⁴ Respondent's submission at para 1225.

⁵⁵ Respondent's submission at paras 1200-1201.

responds to this lack of capability argument by saying it is entirely unsupported, irrelevant, and directly contradicted by the respondent's approach to pursuing information requests.⁵⁶

Analysis

[52] The City has the burden of proving that the respondent's outstanding requests are systematic. For the reasons that follow, I find the City has provided insufficient evidence that these requests were systematic.

[53] The volume and frequency of access requests are relevant indicators in determining whether requests are systematic.⁵⁷ Here, there are only two outstanding requests at issue. Further, there were only a total of six formal access requests, including the two at issue, over a two-and-a-half-year period. I cannot conceive how this might be characterized as high volume or high frequency and find it is neither.

[54] The City must demonstrate a systematic pattern or element in the outstanding requests.⁵⁸ I understand the City's arguments about a systematic pattern to be primarily about the respondent's motivation for making the access requests.

[55] Access applicants generally do not need to justify their motive for requesting access to records. In the context of deciding an application under s. 43 however, motive is a relevant consideration. If it is clear that the motive of the applicant is predominantly to harass, coerce or manipulate the public body, rather than a sincere desire to access records to obtain knowledge, this would support a finding that the requests were systematic.⁵⁹

[56] The City argues the respondent's motivation for the access requests is preparing for and supporting active disputes with the City. The City further says the respondent is motivated by an intent to expose some presumed illicit conduct and conduct surveillance of the City. The City has not convinced me the respondent had that motivation or the intent to harass, coerce, or manipulate. Instead, I see a genuine intent to gain knowledge and gather information relevant to the various employment disputes. In my view this is a legitimate motive for seeking access to information.

[57] Aside from motivation, the City makes a behaviour related argument in support of what it says was a systematic approach to the respondent's outstanding access requests. The City says the respondent challenges its

⁵⁶ City's reply submission at para 39.

⁵⁷ Order F23-37, 2023 BCIPC 44 (CanLII) at para 54.

⁵⁸ *Ibid.*

⁵⁹ *Ibid* at para 61.

decisions by combing over records received in response to access requests to identify further issues and request more records; refusing to accept severing decisions; objecting and asking lots of questions; and complaining to the OIPC.⁶⁰

[58] I can see from the City's evidence that the respondent reviewed the records provided by the City in response to one previous access request (not at issue here) and objected to what they perceived as excessive severing of those records.⁶¹ In my view, this is not an unusual or inappropriate response to the disclosure of severed records.

[59] I am not convinced that the respondent's behaviour amounts to a systematic approach. I can see from the respondent's 137-page submission in this inquiry, as well as from correspondence provided as exhibits to the Director's affidavit, that the respondent is certainly verbose. I am not convinced that the respondent's way of communicating amounts to an organized or systematic approach to the outstanding access requests or that these requests were carried out according to a set of rules or principles.

[60] I find that, on balance, the City's submissions have not clearly established that the respondent's outstanding requests are systematic, in accordance with s. 43(c)(ii).

Conclusion on s. 43(c)

[61] The City claims s. 43(c)(ii) applies, but I have found that the respondent's outstanding requests are neither repetitious nor systematic. Therefore, I find that s. 43(c)(ii) does not apply. As such, I do not have to determine whether the outstanding requests unreasonably interfere with the operations of the public body, and I decline to do so.

Section 43(a) –vexatious

[62] The City alternatively argues for s. 43 authorization to disregard the two outstanding requests on the basis that they are vexatious. Requests that are vexatious are an abuse of the right to access information under FIPPA. Vexatious requests are made for a purpose other than a genuine desire to access information.⁶² Vexatious requests include requests made in bad faith, such as for a malicious purpose or requests made for the purpose of harassing or obstructing the public body.⁶³

⁶⁰ The City identifies six complaints made to the OIPC.

⁶¹ Director's affidavit at para 45.

⁶² Order F23-37, 2023 BCIPC 44 at para 16.

⁶³ Order F22-08, 2022 BCIPC 8 (CanLII) para 83 citing Auth (s. 43) 02-02 [2002] BCIPCD No. 57 at para 27.

[63] Past orders have found requests to be vexatious because:

- The purpose of the requests was to pressure the public body into changing a decision or taking an action;
- The respondent was motivated by a desire to harass the public body;
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions; and
- The request was intended to be punitive and to cause hardship to an employee of a public body.⁶⁴

[64] The City does not clearly differentiate its submissions on vexatious requests from its submissions on systematic requests. It says that, in previous decisions, the OIPC has considered an applicant's systematic use of FIPPA to be vexatious. The City says such systematic use is vexatious because the applicant is using FIPPA for an ulterior purpose relating to a separate dispute.⁶⁵

[65] The respondent says their access requests are not vexatious. The respondent further says they are legitimately seeking access to information in good faith, pursuant to FIPPA.⁶⁶ The respondent says they need the requested records for the legitimate purpose to use in live disputes before several administrative tribunals.⁶⁷

Analysis, s. 43(a)

[66] For the reasons that follow, I find the two outstanding requests are not vexatious.

[67] The respondent's submissions in this inquiry indicate some displeasure with the City. I can see that the respondent communicates in a voluminous way that may create challenges for the City. Overall, though, the City has not demonstrated enough of a link between the respondent's displeasure and their motive for making access requests to the City. An access applicant may be both displeased and make access requests, but this does not make the requests vexatious.⁶⁸ I am not convinced that the respondent was using FIPPA for the purpose of harassing or burdening, expressing displeasure, or criticizing the City. In addition, nothing in the requests themselves indicates they are vexatious.

⁶⁴ Order F23-37, 2023 BCIPC 44 (CanLII) at para 26 citing Auth (s. 43) 02-02, 002 BCIPC 57 (CanLII) at para 27; Decision F08-10, 2008 BCIPC 57362 (CanLII) at paras 38-39; Order F13-16, 2013 BCIPC 20 at para 20; Order F13-18, 2013 BCIPC 25 (CanLII) at para 36; Decision F10-11, 2010 BCIPC 51 (CanLII); Order F16-24, 2016 BCIPC 20 (CanLII) at para. 40; Order F20-15, 2020 BCIPC 17 (CanLII) at para 33; Order F19-44, 2019 BCIPC 50 (CanLII) at para 33.

⁶⁵ City's initial submission at para 44.

⁶⁶ Respondent's submission at para 1293.

⁶⁷ Respondent's submission at para 1297.

⁶⁸ F22-08, 2022 BCIPC 8 (CanLII) at para 99.

[68] I find the two outstanding access requests are not vexatious.

Conclusion, s. 43

[69] To summarize, I have found that the December 3, 2023 and November 25, 2024 access requests, which are the only outstanding requests I considered in this s. 43 application, are not repetitious, systematic, or vexatious.

[70] For the reasons above, I do not give the City permission to disregard any of the four access requests which it sought permission to disregard under s. 43(a) or (c) of FIPPA.

[71] As the City did not prove the outstanding requests were repetitious, systematic, or vexatious, I do not think it is appropriate to authorize it to disregard future requests the respondent may make. For this reason, I also decline to give the City permission to disregard future access requests from the respondent.

March 12, 2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

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